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13 Attorneys for Plaintiff Steven Alvarado and the proposed class

14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT (SAN JOSE)**

16 STEVEN ALVARADO, an
17 individual California resident, and
18 the proposed class,

19 Plaintiff

20 v.

21 AMAZON.COM, INC., a
22 Delaware corporation; and DOES
23 1 THROUGH 10, inclusive,

24 Defendants.

Case No.: 5:20-cv-07292-BLF

**[REDACTED] FIRST AMENDED CLASS
ACTION COMPLAINT FOR:**

1. FAILURE TO PAY WAGES
2. FAILURE TO PAY OVERTIME
3. FAILURE TO PROVIDE REST BREAKS
4. FAILURE TO PROVIDE MEAL PERIODS
5. WAGE STATEMENT VIOLATIONS
6. UNFAIR BUSINESS PRACTICES
7. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
8. FAILURE TO PAY WAGES TO TERMINATED AND RESIGNED EMPLOYEES (Labor Code Section 203)
9. FAILURE TO REIMBURSE BUSINESS EXPENSES (Labor Code Section 2802)

1
2 Plaintiff Steven Alvarado, (hereinafter "Plaintiff") on behalf of himself and
3
4 the proposed class, brings the following causes of action against Defendants.

5 II. THE PARTIES

6 A. Plaintiff

7
8 1. Plaintiff Steven Alvarado ("Plaintiff") is a California resident. At all
9 relevant times alleged herein, Plaintiff was employed by Defendant Amazon.com,
10 Inc. as a non-exempt hourly IT support technician.
11

12 B. Defendants

13 2. Defendant Amazon.com, Inc. ("Amazon" or "Defendant") is a
14 Delaware corporation located in Seattle Washington.
15

16 3. The true names and capacities, whether individual, corporate,
17 associate, or otherwise, of Defendants sued here in as DOES 1 through 10,
18 inclusive, are currently unknown to Plaintiff, who therefore sues such Defendant
19 by such fictitious names. Plaintiff is informed and believes, and based thereon
20 alleges, that Defendants designated herein as a DOE are legally responsible in
21 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of
22 court to amend this complaint to reflect the true names and capacities of the
23 Defendants designated hereinafter as DOES when such identities become known.
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1 9. Plaintiff alleges restitution is owed by Defendant to Plaintiff and the
2 proposed class for unpaid wages due to untimely, unprovided, unrecorded and / or
3 interrupted meal and rest periods.
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5 10. Defendant's pay policies as alleged herein resulted in a failure to pay
6 all wages due for compensable work time while Plaintiff and the proposed class
7 remained subject to Defendant's control. Plaintiff alleges this policy and practice
8 violates California Labor Code sections 200-202, 510 and 1194, and California
9 Industrial Wage Commission (IWC) Wage Order 4-2001.
10
11

12 11. As a result of the Defendant's unlawful pay policies as alleged
13 herein, Defendants failed to provide accurate and itemized wage statements to
14 Plaintiff and the proposed class as required by Labor Code section 226.
15

16 12. On June 13, 2020, Plaintiff filed a Private Attorney General Act
17 (PAGA) complaint with California's Labor Workforce Development Agency
18 (LWDA) alleging Defendant had violated Labor Code sections 201, 202, 203,
19 226, 226.7, 226.8, 510, 512, 1174, 1175, 1182.12, 1194, 1197, 1197.1, 1198,
20 1199, and 2802. Thereafter, Plaintiff served a copy of this PAGA complaint on
21 Amazon.com by certified mail.
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IV. CLASS ALLEGATIONS

13. Plaintiff seeks to represent the following class pursuant to Federal Rule of Civil Procedure Rule 23:

All persons who have worked for Amazon.com in California as a non-exempt IT worker in the last four (4) years and continuing.

Plaintiff reserves the right to amend this class definition.

14. *Numerosity.* The members of the proposed class are so numerous that individual joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed class contains hundreds of thousands of members. The precise number of proposed class members is unknown to Plaintiff. The true number of the proposed class is known by the Defendant, however, and thus, may be notified of the pendency of this action by first class mail, electronic mail, and by published notice.

15. *Existence and Predominance of Common Questions of Law and Fact.* Common questions of law and fact exist as to all members of the proposed class and predominate over any questions affecting only individual proposed class members. There are common legal and factual questions regarding, among other things, whether Plaintiff and the class they seek to represent are owed unpaid wages and unpaid overtime, and how much Defendant owe Plaintiff and the proposed class.

1 16. *Typicality.* Plaintiff's claims are typical of the claims of the proposed
2 class.

3
4 17. *Adequacy of Representation.* Plaintiff will fairly and adequately
5 protect the interests of the members of the proposed class. Plaintiff has retained
6 counsel experienced in complex class action litigation. Plaintiff intends to
7 prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests
8 to those of the proposed class.
9

10
11 18. *Superiority.* A class action is superior to all other available means for
12 the fair and efficient adjudication of this controversy. The damages or other
13 financial detriment suffered by individual proposed class members is relatively
14 small compared to the burden and expense that would be entailed by individual
15 litigation of their claims against the defendant. It would thus be virtually
16 impossible for the class, on an individual basis, to obtain effective redress for the
17 wrongs done to them. Furthermore, even if proposed class members could afford
18 such individualized litigation, the court system could not. Individualized litigation
19 would create the danger of inconsistent or contradictory judgments arising from the
20 same set of facts. Individualized litigation would also increase the delay and
21 expense to all parties and the court system from the issues raised by this action. By
22 contrast, the class action device provides the benefits of adjudication of these
23 issues in a single proceeding, economies of scale, and comprehensive supervision
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1 by a single court, and presents no unusual management difficulties under the
2 circumstances here.

3
4 **V. CAUSES OF ACTION**

5
6 **FIRST CAUSE OF ACTION**

7 **Failure to Pay Minimum Wage (Labor Code §§ 1194, 1197 and 1197.1)**

8 19. Plaintiff realleges and incorporates by reference each of the foregoing
9 paragraphs as if set forth herein.

10
11 20. Defendant illegally failed to pay wages and overtime wages owed,
12 and in so doing, Defendant willfully violated the provisions of Labor Code
13 sections 510, 1194, 1198, 1199, IWC Wage Order and California Code of
14 regulations, Title 8, section 11160(3).

15
16 21. Plaintiff seeks all actual, consequential and incidental losses and
17 damages according to proof, and penalties of \$100.00 for the initial failure to
18 timely pay minimum wages and \$250.00 for each subsequent failure to pay
19 minimum wages pursuant to California Labor Code section 1197.1, liquidated
20 damages in an amount equal to the wages unlawfully unpaid and interest thereon
21 pursuant to California Labor Code section 1194.2, all unpaid wages and civil
22 penalties pursuant to California Labor Code section 2699(g) and (g) and 558 in an
23 amount of one hundred dollars (\$100) for each violation per pay period for the
24 initial violation and two hundred dollars (\$200) per pay period for each
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1 subsequent violation, plus costs and attorneys' fees for violation of California
2 Labor Code section 1198. Plaintiff is liable to Plaintiff and the proposed class for
3 actual wage and hour damages, statutory damages, and attorneys' fees and costs.
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5 **SECOND CAUSE OF ACTION**

6 **Failure to Pay Overtime Wages**

7 **(Labor Code §§ 510, 1194, 1198, and 1199, IWC Wage Orders)**

8
9 22. Plaintiff realleges and incorporates by reference each of the foregoing
10 paragraphs as if set forth herein.
11

12 23. Plaintiff and the proposed class often worked more than 8 hours in a
13 day and 40 hours in a week but were not paid at 1.5 times their regular rate for all
14 of their overtime hours worked. Defendant illegally failed to pay overtime wages
15 to Plaintiff and the proposed class as required by California law, and in so doing,
16 Defendant willfully violated the provisions of Labor Code sections 510, 1194,
17 1198, 1199, IWC Wage Orders, and California Code of regulations, Title 8,
18 section 11160(3).
19
20

21 24. California law requires employers to pay overtime compensation to
22 all non-exempt employees for all hours worked over eight (8) hours in a day or
23 forty (40) hours in a week for overtime, and to pay double time for shifts over
24 twelve (12) hours.
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1 25. As a direct and proximate result of Defendant's unlawful conduct, as
2 set forth herein, Plaintiff has sustained damages, including loss of compensation
3 for overtime worked on behalf of Defendant, in an amount to be established at
4 trial, including prejudgment interest, and costs and attorney's fees, pursuant to
5 statute and other applicable law.
6

7
8 26. Plaintiff alleges Defendant is liable to Plaintiff and the proposed class
9 for actual wage and hour damages, statutory damages, and attorneys' fees and
10 costs.
11

12 THIRD CAUSE OF ACTION

13 Failure to Provide Rest Breaks

14 (Labor Code § 226.7, 512; IWC Order 5; Cal. Code Regs., Title 8 § 11050)
15

16
17 27. Plaintiff realleges and incorporates by reference each of the foregoing
18 paragraphs as if fully set forth herein.

19 28. By failing to provide rest periods every four (4) hours or major
20 fraction thereof worked per workday by non-exempt employees and failing to
21 provide one (1) hour's pay in lieu thereof, Defendant willfully violated the
22 provisions of Labor Code section 226.7 and IWC Wage Orders at section 12.
23

24
25 29. By failing to keep adequate time records as required by sections 226
26 and 1174(d) of the Labor Code and IWC Wage Order at section (7), Defendant
27 has injured Plaintiff and made it difficult to calculate the unpaid rest and meal
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1 period compensation due Plaintiff. On information and belief, Plaintiff alleges
2 Defendant's failure to maintain accurate time records for Plaintiff and the
3 proposed class was willful.
4

5 30. As a result of the unlawful acts of Defendant, Plaintiff and the
6 proposed class have been deprived of premium wages in amounts to be
7 determined at trial, and are entitled to an accounting and recovery of such
8 amounts, plus interest and penalties thereon, attorneys fees and costs, under Labor
9 Code sections 201, 202, 203, 218.5, 226, 226.7, 1194 and 1199, and the applicable
10 IWC Wage Orders.
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13 31. Plaintiff alleges Defendant is liable to Plaintiff and the proposed class
14 for actual damages, statutory damages, and attorneys' fees and costs.
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16 **FOURTH CAUSE OF ACTION**

17 **Failure to Provide Meal Periods**

18 **(Labor Code § 226.7 and 512)**

19
20 32. Plaintiff realleges and incorporates by reference each of the foregoing
21 paragraphs as if fully set forth herein.
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23 33. California law, as set forth in relevant part by the Industrial Welfare
24 Commission Wage Orders at section (11), provides as follows:
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- i. No employer shall employ any person for a work period or more than five (5) hours without a meal period of not less than 30 minutes...
- ii. If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

34. Labor Code § 226.7 requires payment of one (1) hour of pay in lieu of meal periods not provided by the employer. Throughout the period applicable to this cause of action, Defendant consistently failed to allow and provide meal periods to Plaintiff and the proposed class, required by California law.

35. Plaintiff alleges Defendant required Plaintiff to work during meal periods mandated by the applicable orders of the Industrial Welfare Commission.

36. On information and belief, Plaintiff alleges he and the proposed class did not voluntarily or willfully waive rest and meal periods and were regularly required to work through rest and meal periods. Defendant failed to meet the requirements for lawful on-duty rest and meal periods and instead instituted a course of conduct that created a working environment in which non-exempt employees were discouraged from, or not able to take timely rest and meal

1 periods. Plaintiff alleges that any written waivers were obtained improperly and
2 without full disclosure and are thus involuntary and without consent.

3
4 37. Plaintiff alleges Defendant is liable to Plaintiff and the proposed class
5 for actual damages, statutory damages, and attorneys' fees and costs.

6
7 **FIFTH CAUSE OF ACTION**

8 **Wage Statements Violations**

9 **(Labor Code §226(a))**

10
11 38. Plaintiff realleges and incorporates by reference each of the foregoing
12 paragraphs as if fully set forth herein.

13 39. Section 226(a) of the California Labor Code requires Defendants to
14 itemize all wage statements deductions from payment of wages and to accurately
15 report total hours worked by Plaintiff and the proposed class. Plaintiff alleges
16 Defendant has knowingly and intentionally failed to comply with Labor Code
17 section 226(a) on each and every wage statement provided to Plaintiff.

18
19
20 40. California Labor Code § 226(a) sets forth reporting requirements for
21 employers when they pay wages: Every employer shall at the time of each
22 payment of wages, furnish each of his or her employees an accurate itemized
23 statement in writing showing (1) gross wages earned, (2) total hours worked, (3)
24 the number of piece rate units worked or earned, (4) all deductions, (5) net wages
25 earned, (6) the inclusive dates for the period paid, (7) partial social security
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1 number, (8) the name and address of the legal entity that is the employer, and (9)
2 all applicable hourly rates in effect during the pay period and the corresponding
3 number of hours worked at each hourly rate by the employee.
4

5 41. As a consequence of Defendant's knowing and intentional failure to
6 comply with Labor Code section 226(a), Plaintiff and the proposed class are
7 entitled to actual damages or penalties not to exceed \$4,000 each pursuant to
8 Labor Code section 226(b), together with interest thereon and attorneys' fees and
9 costs.
10
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12 SIXTH CAUSE OF ACTION

13 Violations of the Unfair Competition Law

14 (Bus. & Prof. Code, §§ 17200-17208)

15
16 42. Plaintiff realleges and incorporates by reference each of the foregoing
17 paragraphs as if fully set forth herein.
18

19 43. Defendant's policy and practices alleged herein resulted in the
20 Defendant's failure to pay for all working hours and failure to pay overtime, as
21 mandated by law. Plaintiff alleges Defendant has violated IWC Wage Orders and
22 California Labor Code by engaging in the violations alleged herein, which
23 constitute unlawful activity prohibited by Business and Professions Code section
24 17200 *et seq.*
25
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27 44. The actions of Defendant in failing to pay Plaintiff and the proposed
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1 class in a lawful manner constitutes false, unfair, fraudulent and deceptive
2 business practices within the meaning of Business and Professions Code, sections
3 17200, *et. seq.*

4
5 45. Plaintiff is entitled to an injunction, specific performance under
6 Business and Professions Code, section 17202, and other equitable relief against
7 such unlawful practices in order to prevent future loss, for which there is no
8 adequate remedy at law.
9

10
11 46. As a result of Defendant's unlawful acts, Defendant has reaped and
12 continue to reap unfair benefits at the expense of Plaintiff and the proposed class.
13 Defendants should be enjoined from this activity, caused to specifically perform
14 their obligations, and made to disgorge these ill-gotten gains, and restore to
15 Plaintiff and the proposed class wrongfully withheld wages and other moneys
16 pursuant to Business and Professions Code, sections 17200 *et seq.* Plaintiff is
17 informed and believes, and on that basis alleges, that Defendant has been unjustly
18 enriched through Defendant's failure to provide wages and overtime wages to
19 Plaintiff and the proposed class.
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23 47. Plaintiff and the proposed class have been prejudiced by Defendant's
24 unfair trade practices.
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1 48. As a direct and proximate result of the unfair business practices of
2 Defendant, and each of them, Plaintiff and the proposed class are entitled to
3 equitable and injunctive relief, full restitution, specific performance, and
4 disgorgement.
5

6 49. The illegal conduct alleged herein is continuing and there is no
7 indication that Defendant will discontinue such activity in the future. Plaintiff
8 alleges that if Defendant is not enjoined from the conduct set forth in this
9 Complaint, Defendant will continue to fail to pay all wages owed.
10

11 50. Plaintiff requests that the court issue a preliminary and permanent
12 injunction prohibiting Defendant from continuing to fail to pay all wages owed.
13
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15 **SEVENTH CAUSE OF ACTION**

16 **Violation of the Private Attorneys General Act**

17 **(Labor Code §§ 2698)**
18

19 51. Plaintiff realleges and incorporates by reference each of the foregoing
20 paragraphs as if fully set forth herein.
21

22 52. As a result of the acts alleged above, Plaintiff seeks penalties under
23 all Labor Code Sections, including but not limited to, 201, 202, 203, 226, 226.7,
24 226.8, 510, 512, 1174, 1175, 1182.12, 1194, 1197, 1197.1, 1198, 1199, and 2802.
25

26 53. For each such violation, Plaintiff is entitled to penalties in an amount
27 to be shown at the time of trial subject to the following formula:
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1 1. For \$100 for the initial violation per pay period.

2 2. For \$200 for each subsequent violation per pay period.

3
4 54. These PAGA penalties should be allocated 75% to the Labor and
5 Workforce Development Agency ("LWDA") and 25% to the affected employee.

6
7 55. Plaintiff filed a PAGA complaint online with the LDWA on or about
8 May 6, 2020, and served Defendants by certified mail as prescribed by the Labor
9 Code. Plaintiff seeks penalties as though the LWDA decided not to investigate
10 pursuant to Labor Code §2699.3(a)(2)(A).

11
12 56. Plaintiff seeks PAGA penalties for the Labor Code violations alleged
13 herein suffered by Plaintiff and his fellow aggrieved Amazon IT workers from
14 May 6, 2019 through the present and continuing.

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16 **EIGHTH CAUSE OF ACTION**

17 **Failure to Pay Wages of Terminated or Resigned Employees**

18 **(Labor Code § 201-203)**

19
20 57. Plaintiff realleges and incorporates by reference each of the foregoing
21 paragraphs as if fully set forth herein.

22
23 58. As of the filing of the Complaint, Defendant has failed to timely pay
24 wages due, and Plaintiff is owed penalties pursuant to Labor Code sections 201,
25 202 and 203.

26
27 59. Defendant failed to pay Plaintiff and the proposed class, without
28

1 abatement, all wages owed to Plaintiff within the time required by applicable
2 California law. Among other things, these employees were never paid any of the
3 overtime compensation referred to in this Complaint, nor were they paid the other
4 unpaid wages referred to in this Complaint. Defendant's failure to pay said wages
5 within the required time was willful within the meaning of Labor Code section
6 203.
7

9 60. Therefore, each of these employees is entitled to one day's wages for
10 each day he or she was not timely paid all wages due, up to a maximum of thirty
11 days' wages for each employee. Because Plaintiff and the proposed class were
12 never paid the overtime wages to which they were entitled, and were never paid
13 other unpaid wages referred to in this Complaint, each of said employees is
14 entitled to thirty days' wages.
15

16 61. Plaintiff alleges Defendant is liable to Plaintiff for actual damages,
17 statutory damages, and attorneys' fees and costs.
18

19 NINTH CAUSE OF ACTION

20 **Failure to Reimburse Business Expenses**

21 **(Labor Code § 2802)**

22 62. Plaintiff realleges and incorporates by reference each of the foregoing
23 paragraphs as if fully set forth herein.
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63. Plaintiff alleges that at times Defendant has failed to reimburse reasonable business expenses to Plaintiff and the proposed class.

64. Plaintiff alleges Defendant is liable to Plaintiff for actual damages, including expense reimbursement, and attorneys' fees and costs.

VI.

PRAYER FOR RELIEF

Plaintiff prays as follows:


1. That the Court determine that the failure of the Defendants to pay compensation to the Plaintiff is adjudged and decreed to violate the applicable IWC Wage Orders, regulations and statutes;
2. That the Defendants are ordered to pay and judgment be entered for wages for Plaintiff according to proof;
3. That the Defendants are ordered to pay and judgment be entered for overtime wages, to Plaintiff according to proof;
4. That the Defendants are ordered to pay and judgment be entered for liquidated damages under Labor Code section 1194.2 to Plaintiff according to proof;
5. That the Defendants are ordered to pay and judgment be entered for Labor Code, section 226 penalties to Plaintiff according to proof;
6. That the Defendants are ordered to pay and judgment be entered for

- 1 Labor Code, section 226(f) penalties to Plaintiff according to proof;
- 2
- 3 7. That the Defendants are ordered to pay and judgment be entered for
- 4 Labor Code, section 203 penalties to Plaintiff according to proof;
- 5
- 6 8. That the Defendants are found to have engaged in unfair competition in
- 7 violation of Business and Professions Code, section 17200;
- 8
- 9 9. That the Defendants are ordered and enjoined to pay restitution to
- 10 Plaintiff due to the Defendants' unlawful and unfair competition,
- 11 including disgorgement of their wrongfully obtained profits, wrongfully
- 12 withheld wages according to proof, and interest thereon pursuant to
- 13 Business and Professions Code, sections 17203 and 17204;
- 14
- 15 10. That Defendants are enjoined from further acts of unfair competition and
- 16 specifically from failing to pay compensation to Plaintiff;
- 17
- 18 11. That Plaintiff is awarded Attorneys' fees and costs pursuant to statute,
- 19 including but not limited to Labor Code, section 1194 and Code of Civil
- 20 Procedure, section 1021.5;
- 21
- 22 12. Otherwise determine the appropriate remedy to compensate Plaintiff, as
- 23 required to promote fairness and justice, including but not limited to
- 24 establishing procedures for compensation, compensation amounts and
- 25 fluid recovery if appropriate.
- 26
- 27 13. Prejudgment Interest; and
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1 14. Any other relief this court deems proper.

2 **DATED:** August 4, 2021

3 **HAMNER LAW OFFICES, APLC**

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6 Christopher J. Hamner
7 Attorneys for Plaintiff
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